



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 26, 1996

Mr. Ivan J. Mlachak
Feldman & Associates
12 Greenway Plaza, Suite 1202
Houston, Texas 77046

OR96-2246

Dear Mr. Mlachak:

You ask this office to reconsider our decision in Open Records Letter No. 95-1194 (1995). We assigned your request for reconsideration ID# 37157.

You have requested reconsideration of our decision only with regard to attorney bills charged by you to your client, Clear Creek Independent School District (the "school district"). In Open Records Letter No. 95-1194 (1995), this office concluded, in pertinent part, that you had not met your burden under section 552.103 of the Government Code because you did not demonstrate that the school district was a party to pending or reasonably anticipated litigation or how the requested information related to that litigation. We did, however, conclude that certain portions of these attorney bills could be withheld under section 552.107.

In your request for reconsideration, you contend that these attorney bills should be withheld in their entirety under section 552.103 because they are for "legal services rendered in representing [the school district] as a party in litigation matters." You did not, however, make this assertion in your original request. Moreover, you did not argue how the attorney fee bills related to the litigation.

The Open Records Act places on a governmental body the burden of establishing why and how an exception applies to requested information. Open Records Decision Nos. 542 (1990), 532 (1989), 515 (1988). The school district did not meet its burden of establishing why and how section 552.103 applied to the requested information in its original request. Generally, a governmental body cannot provide additional arguments to withhold information in a request for reconsideration, unless there is a compelling reason to withhold the information. See Open Records Decision No. 515 (1988); see also Open Records

Decision No. 630 (1994) (concluding that fact that information is within attorney-client privilege does not alone constitute compelling reason to withhold information from public disclosure once ten-day time period has elapsed).

Although you have not established that a compelling interest exists to withhold this information, upon further review, we conclude that the documents in Exhibits A, B, and C show on their face that they relate to litigation. You state that these matters are pending. However, we do not believe that any of the entries in Exhibit D show on their face that they relate to pending litigation.

Thus, we now amend our decision in Open Records Letter No. 95-1194 (1995) and conclude that the descriptions of the services in entries relating to the pending litigation in Exhibits A, B, and C may be withheld under section 552.103. You have not explained, however, how the amount or nature of attorneys' fees and expenses are at issue in these litigation matters. Therefore, you may not withhold the dates of services, the initials of the providers, or the time and dollar amounts associated with the services in Exhibits A, B, and C under section 552.103. We have marked the documents accordingly. You may not withhold any of the information contained in Exhibit D under section 552.103, although you may withhold that information this office previously determined may be withheld under section 552.107(1) of the Government Code.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese". The signature is fluid and cursive, with a large initial "T" and a long, sweeping underline.

Todd Reese
Assistant Attorney General
Open Records Division

¹In reaching the conclusion that the descriptive entries in Exhibits A, B, and C may be withheld under section 552.103, we assume that the opposing parties to the pending litigation have not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the pending litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103. We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

RTR/rho

Enclosures: Submitted documents

Ref.: ID#s 25785, 37157

cc: Ms. Susan Wilcox
TSTA Uni-Serv
2319 Lee's Court
League City, Texas 77573
(w/o enclosures)